REMARKS/ARGUMENTS

The rejections presented in the final Office Action dated March 9, 2006 (hereinafter Office Action) have been considered. Claims 1-63 remain pending in the application. Claims 6, 7, 12-43, 45, 48, 51, 52, 59, and 60 were withdrawn by the Examiner as being directed to non-elected inventions or species. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 1-5, 8-11, 44, 46, 47, 49, 50, 53-58 and 61-63 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,445,608 to *Chen et al.* (hereinafter "*Chen*"). Applicant has reviewed the Examiner's Response to Arguments presented on page 2 of the Office Action.

In the Response to Arguments, the Examiner contends that Applicant argues that the device disclosed by *Chen* is not a dissection tool because it is left in the body for too long, which the Examiner contends is an intended use. Applicant respectfully disagrees. As is discussed below, the differences between the devices disclosed in *Chen* and Applicant's claimed subject matter are structural differences. However, the intended use of *Chen* amplifies the significance of these structural differences.

Chen discloses a photodynamic treatment (PDT) probe 40 that includes an array of LEDs 54. The LEDs of probe 40 are mounted to a planar light bar 72, which is encapsulated in an electrically insulating, light diffusing semitransparent polymer 74. Probe 40 is connected to a flexible catheter 44. Figure 12A shows an example of a flexible catheter contemplated by *Chen*, which is described as a PMMA or silicone rubber material (column 20, lines 13-15).

Chen clearly fails to teach a tunneling tool as contemplated in Applicant's pending claims. The combination of *Chen's* probe and flexible catheter clearly does not constitute a dissecting member, as is recited in Applicant's claims. There is no teaching in *Chen* that its probe and flexible catheter can be used to dissect tissue. Applicant asserts that one skilled in the art would not consider such structures to constitute a tunneling tool having a dissecting member.

Moreover, *Chen* teaches that its implantable probe is positioned at the treatment site during a surgical procedure that opens the treatment site or provides access to a patient's internal systems. For example, and with reference to column 8, lines 6-13, *Chen* teaches that one such surgical procedure involves making an incision that allows insertion of the implantable probe into the cardiovascular system. At column 24, lines 33-37, *Chen* teaches that a skin penetration procedure, perhaps requiring minor surgery, "is necessary to introduce and position the implantable probe at the treatment site."

Chen does not teach that its probe can be used to create access to a treatment site. Rather, *Chen* teaches that such access is created by another instrument that is suitable for penetrating the skin. Also, the suggested use of the implantable probe within the cardiovascular system strongly suggests that the *Chen* structure is not a dissecting tool.

Because *Chen* fails to teach, expressly or inherently, a dissecting member, *Chen* also fails to teach a light source provided at the distal end of a dissecting member.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain a rejection based on 35 U.S.C. §102.

Applicant respectfully submits that *Chen* does not teach every element of Applicant's rejected claims 1-5, 8-11, 44, 46, 47, 49, 50, 53-58 and 61-63, and therefore fails to anticipate these claims. The *Chen* device is clearly not the identical invention shown in as complete detail as is contained in Applicant's rejected claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant's dependent claims 2-5, 8-11, 46, 47, 49, 50, 54-58, and 61-63, which depend from independent claims 1, 12, 29, 44, and 53 respectively, were also rejected under 35 U.S.C. §102 as being anticipated by *Chen*. While Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now

moot in view of the remarks made in connection with Applicant's independent claims. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from *Chen*. Therefore, dependent claims 2-5, 8-11, 46, 47, 49, 50, 54-58, and 61-63 are also not anticipated by *Chen*.

Applicant notes a mis-numbering of the original listing of claims as filed that inadvertently omitted a claim 32. Upon the indication of allowable subject matter by the Examiner, Applicant will submit an amendment to correct this omission. Alternatively, Applicant authorizes the Examiner to make such correction by way of Examiner's amendment.

Lastly, Applicant respectfully reminds the Examiner that Applicant is entitled to consideration of the claims to additional species, including those identified by the Examiner, pursuant to 37 C.F.R. § 1.141, upon allowance of a generic claim(s).

It is believed that Applicant's pending and re-joinable claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact the undersigned attorney if there are any questions regarding this matter.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.619PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact him at to discuss any issues related to this case.

Respectfully submitted,
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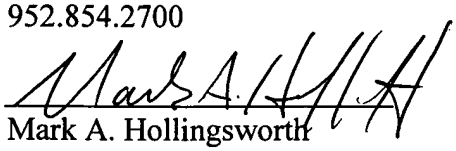
By: 
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